

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GRANGE SUPPLY CO. INC. OF  
PULLMAN and DIVINE  
CORPORATION,

NO. CV-09-359-EFS

Plaintiffs,

**PROTECTIVE ORDER**

v.

CHS INC.,

Defendant.

On March 11, 2010, the parties filed a Motion for Entry of Stipulated Protective Order. (Ct. Rec. [17](#).) Based upon the parties' Stipulation, the following Protective Order is **HEREBY ENTERED:**

1. As used herein, "Confidential Information" of any party disclosing information (the "Supplying Party") shall mean any and all information, including, without limitation, all oral written, graphical and/or electronic information disclosed to another party hereto (the "Receiving Party"), including, but not limited to, documents disclosed as part of the disclosure process and/or disclosed as responses for production of documents, answers to interrogatories, and deposition

1 transcripts, whether any such Confidential Information is delivered to  
2 the Receiving Party directly by the Supplying Party, or indirectly  
3 through an agent of the Disclosing Party and/or Receiving Party,  
4 including, but not limited, to an attorney representing a party, which  
5 is designated as "Confidential" as provided in Paragraphs 2 and 3 below.

6       2. Any party may designate as Confidential Information any  
7 information considered by such party to constitute confidential and  
8 proprietary to such party ("Designating Party").

9       3. Any Confidential Information supplied in written or graphical  
10 form shall be labeled by the Designating Party either "Confidential" or  
11 "Confidential - Attorneys Only." Any Confidential Information supplied  
12 in electronic form shall be accompanied by a document from the Designated  
13 Party identifying such information to be either "Confidential" or  
14 "Confidential - Attorneys Only." The Designating Party may label  
15 Confidential Information as "Confidential - Attorneys Only" only if, in  
16 the good faith belief of such party, the disclosure of such information  
17 to any person or entity other than those specified in Paragraph 4(b) of  
18 this Stipulated Protective Order would cause harm to the business and/or  
19 operations and/or reputation of such party. With respect to the  
20 examination of witnesses upon oral deposition, when Confidential  
21 Information is supplied and/or when the deponent's testimony contains,  
22 reflects or relates in any way to Confidential Information, the reporter  
23 will be informed of this Stipulated Protective Order by the party seeking  
24 confidentiality and will be required to operate in a manner consistent  
25 therewith. The reporter shall place on the cover of any deposition  
26 transcript which contains any Confidential Information the words  
"Contains Confidential Information." Counsel for the respective parties

1 shall take appropriate steps to prevent any portions of any deposition  
2 transcript designated "Confidential" or "Confidential - Attorneys Only"  
3 from being disclosed to any person except as provided in this Stipulated  
4 Protective Order. Each Designating Party shall provide the other parties  
5 with a list of the page(s) of each deposition transcript and any exhibits  
6 attached thereto that the party has designated as "Confidential" and/or  
7 "Confidential - Attorneys Only." Unless the parties otherwise agree, such  
8 list shall be provided to the other parties within ten business days  
9 after receipt by counsel for the respective parties of a copy of any  
10 deposition transcript.

11       4. All Confidential Information disclosed by a Disclosing Party  
12 to a Receiving Party shall be received by such Receiving Party in  
13 confidence, shall be used by such Receiving Party solely in connection  
14 with the trial or preparation for trial of the above-noted action, shall  
15 be treated by it in the same manner with which it treats its own  
16 information which it deems to be confidential and proprietary, and shall  
17 not be disclosed, directly or indirectly, to any person except as  
18 provided in this paragraph.

19           a. In the case of a "Confidential" designation, for each  
20 party other than the Designating Party, access to such  
21 information shall be limited to:

- 22              (1) the party receiving the information;  
23              (2) counsel for the party whether or not counsel of record in  
24 this proceeding (including members and employees of such  
25 counsel's law firm) and in-house counsel for the party;  
26              (3) persons engaged by the party's attorney to furnish expert  
and litigation support services;

- 1 (4) directors, officers, agents, employees, lenders,  
2 financial advisors, and accountants of the party to whom  
3 the Receiving Party believes, in good faith, it is  
4 necessary that the materials be shown solely for purposes  
5 of this legal action;
- 6 (5) pursuant to the restrictions set forth in Paragraph 6 of  
7 this Stipulated Protective Order, deponents in this legal  
8 action incident to their depositions;
- 9 (6) pursuant to the restrictions set forth in Paragraph 9 of  
10 this Stipulated Protective Order, officers of the Court,  
11 witnesses in any legal proceeding in this action for  
12 which it is relevant, and members of the jury; and
- 13 (7) such other persons as hereafter may be designated by  
14 written agreement of the parties or by order of the  
15 Court.

16 Said access shall be for the sole limited purpose of trial or  
17 preparation for trial of the above-noted action.

18 b. In the case of a "Confidential - Attorneys Only"  
19 designation, for each party other than the Designating Party,  
20 access to such information shall be limited to:

- 21 (1) counsel for the party whether or not counsel of record in  
22 this proceeding (including members and employees of such  
23 counsel's law firm) and in-house counsel for the party;
- 24 (2) persons employed by the party's attorney to furnish  
25 expert and litigation support services in this action,  
but not including the party receiving the information, or  
any director, officer, agent or employee of the party;

(3) pursuant to the restrictions set forth in Paragraph 9 of this Stipulated Protective Order, officers of the Court, members of the jury; and

(4) such other persons as hereafter may be designated by written agreement of the parties or by order of the Court.

Said access shall be for the sole limited purpose of trial or preparation for trial of the above-noted action. Except for the Designating Party, no party to this action or any director, officer, employee or agent of such party (other than counsel) shall have access to Confidential Information which is designated "Confidential -Attorneys Only."

13       5. A designation of confidentiality pursuant to this Stipulated  
14 Protective Order shall be effective and shall be respected by the parties  
15 and all persons in any way involved in these proceedings or to whose  
16 attention the aforesaid material or information shall come unless and  
17 until otherwise ordered by the Court or stipulated by all parties to this  
18 action. These obligations of confidentiality and non-disclosure shall  
19 survive for five years after the conclusion of this action.

20       6. Confidential Information held by a party may be disclosed to  
21 persons as provided in Paragraph 4, provided that prior to such  
22 disclosure such person to whom disclosure of Confidential Information is  
23 to be made shall acknowledge and confirm in the form of a Declaration,  
24 in the form of Exhibit A hereto, that he or she has read this Stipulated  
25 Protective Order and agrees to comply with its terms. Confidential  
26 Information designated by a party as "Confidential" may be disclosed by  
any other party to a deponent during the deponent's deposition provided

1 that the deponent has been informed of this Stipulated Protective Order  
2 and executes a Declaration, in the form of Exhibit A hereto, that he or  
3 she has read this Stipulated Protective Order and agrees to comply with  
4 its terms. The attorneys for the respective parties shall maintain a file  
5 of such Declarations, and shall furnish to the requesting attorney a list  
6 of the executing individuals (excluding the names of experts and  
7 consultants whose names have not been disclosed in the litigation to date  
8 and their employees) within twenty (20) days of receipt of a written  
9 request.

10       Confidential Information designated by a party as "Confidential -  
11 Attorneys Only" may not be disclosed to a deponent unless he or she is  
12 a person qualified to have access to such information pursuant to  
13 Paragraph 4(b) of this Stipulated Protective Order, the parties otherwise  
14 agree, or the Court, for good cause shown, otherwise orders. If  
15 Confidential Information designated as "Confidential - Attorneys Only"  
16 is to be discussed or disclosed in a deposition, any party claiming such  
17 confidentiality may exclude from the room any person who is not entitled  
18 to receive information or documents, or any things designated as  
19 "Confidential - Attorneys Only."

20       7. Nothing herein shall prohibit a party, or its counsel, from  
21 disclosing a document which constitutes Confidential Information to the  
22 person whom the document identifies as an author, addressee or recipient  
23 of such document.

24       8. All documents, including deposition transcripts, containing  
25 Confidential Information which are filed or lodged with the Court, shall  
26 be filed or lodged in a sealed envelope or other appropriate sealed  
container on which shall be endorsed the title to the action to which it

1 pertains, an indication of the nature of the contents of such sealed  
2 envelope or other container, the word "CONFIDENTIAL," and a statement  
3 substantially in the following form:

4       "This envelope is sealed and contains confidential information  
5       filed [or lodged] in this case by [name of party] and is not  
6       to be opened or the contents thereof displayed or revealed  
7       except by order of the court or pursuant to stipulation of the  
8       parties to this action."

9       Said envelope or container shall not be opened without order of the  
10      Court except by officers of the Court and counsel of record who, after  
11      reviewing the contents, shall return them to the clerk in a sealed  
12      envelope or container.

13       9. In the event any Confidential Information is used in any  
14      pretrial or discovery proceeding in this action, it shall not lose its  
15      confidential status through such use. All Confidential Information and  
16      pretrial deposition testimony given in this action which contains or  
17      discusses Confidential Information ("Confidential Testimony") shall be  
18      presented only to persons authorized by the terms of this Stipulated  
19      Protective Order to have access to Confidential Information, or to the  
20      Court under seal. Any party filing Confidential Information or  
21      Confidential Testimony with the Court shall indicate to the Court on  
22      filing what portion(s) thereof are subject to this Stipulated Protective  
23      Order, and that the pretrial presentation of such Confidential  
24      Information or Confidential Testimony shall be filed under seal. All such  
25      Confidential Information and transcripts of Confidential Testimony shall  
26      be kept by the clerk under seal and shall be made available only to the  
Court and its staff and to the persons authorized by the terms of this  
Stipulated Protective Order to have access to Confidential Information.

1       10. The parties, their officers, agents and employees, and their  
2 attorneys, shall be responsible to see that the purpose and effect of  
3 this Stipulated Protective Order is achieved.

4       11. Nothing in this Stipulated Protective Order shall preclude a  
5 party from applying to the Court for an order removing "Confidential"  
6 designation from information. If the Court finds it appropriate, the  
7 Court may examine the designated material or hear the designated  
8 testimony in camera. Neither party shall be obligated to challenge the  
9 propriety of the confidential designation, and a failure to do so shall  
10 not preclude a subsequent attack on the propriety of such designation.  
11 In the event of such a challenge, the party seeking confidentiality for  
12 particular documents or information shall have the burden of establishing  
13 confidentiality for the particular documents or information.

14       12. This Stipulated Protective Order may be modified by further  
15 order of this Court or by agreement of counsel for the parties, subject  
16 to the approval of the Court, provided that any such agreement be  
17 memorialized in the form of a stipulation that shall be filed with the  
18 clerk and made a part of the record in this case.

19       13. Within ninety (90) days following the termination of this  
20 action (including any appeals), all Confidential Information designated  
21 as such by the Supplying Party shall be returned to the Supplying Party,  
22 and all copies, summaries or transcripts thereof, and any and all other  
23 documents which contain, reflect, refer or relate to such Confidential  
24 Information which are not delivered to the Supplying Party, shall be  
25 destroyed, except that Counsel for each party may retain any attorney  
26 work product that contains Confidential Information. Counsel of record  
for each party shall attest to compliance with the terms of this

1 Paragraph 13 in an affidavit or declaration served on each other party  
2 within the 90-day period.

3       14. The provisions of this Stipulated Protective Order apply to all  
4 proceedings in this matter, including all appeals and proceedings upon  
5 remand.

6       15. Nothing in the foregoing provisions regarding confidentiality  
7 shall prevent or otherwise restrict counsel from rendering advice to  
8 their clients and, in the course thereof, relying generally on  
9 examination of stamped confidential documents; provided, however, that  
10 in rendering such advice and otherwise communicating with such clients,  
11 counsel shall not make specific disclosure of any item so designated  
12 except pursuant to the foregoing provisions.

13       16. The attorneys of record are responsible for employing  
14 reasonable measures consistent with this Stipulated Protective Order, to  
15 control duplication of, access to, and distribution of copies of  
16 Confidential Information. Parties shall not duplicate any stamped  
17 confidential document except for producing working copies and for filing  
18 in court under seal.

19       17. The following provisions shall apply to inadvertent  
20 disclosures:

21           a. The inadvertent, unintentional, or in camera disclosure  
22           of confidential documents and information shall not, under any  
23           circumstances, be deemed a waiver, in whole or in part, of any  
24           party's claims of confidentiality.

25           b. If a Supplying Party realizes that it has inadvertently  
26           produced material it considers confidential without so marking  
it, it may notify the Receiving Party of the mistake. Upon

1 receiving such notice, the Receiving Party will treat such  
2 material and the information contained therein as Confidential  
3 or Confidential - Attorneys Only hereunder depending upon the  
4 Supplying Party's instructions, and shall promptly either so  
5 mark such material or shall return the material, uncopied, to  
6 the Supplying Party, who shall then promptly mark the material  
7 as Confidential or Confidential - Attorneys Only and again  
8 deliver it to the Receiving Party.

9 c. The procedure set forth in sub-paragraph 17b, above, is  
10 in furtherance of and not in limitation of the provisions of  
11 sub-paragraph 17a. A Supplying Party's failure to follow the  
12 procedure set forth in sub-paragraph 17b shall not constitute  
13 a waiver of such party's claim of confidentiality as to any  
14 material or information.

15 18. By entering into this Stipulated Protective Order, neither  
16 party waives any objections it may have to the production of any  
17 documents covered by this Stipulated Protective Order.

18 19. The parties' Motion for Entry of Stipulated Protective Order  
**(Ct. Rec. 17)** is **GRANTED**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
21 this Order and distribute copies to counsel.

22 **DATED** this 22<sup>nd</sup> day of March 2010.

23 \_\_\_\_\_  
24 S/ Edward F. Shea  
EDWARD F. SHEA  
25 United States District Judge  
26

Q:\Civil\2009\359.stip.protect.wpd

**EXHIBIT A**

1                   Timothy Esser, WSBA No. 6864  
 2                   Roger Sandberg, WSBA No. 39020  
 3                   ESSER & SANDBERG, PLLC  
 4                   520 East Main Street  
 5                   Pullman, Washington 99163  
 6                   Telephone: (509) 3323-7692  
 7                   Facsimile: (509) 334-2205  
 8                   email@essersandberg.com

9                   Attorneys for Plaintiffs Grange Supply Co., Inc. and Divine Corporation

10                  William J. Schroeder, WSBA No. 7942  
 11                  Gregory C. Hesler, WSBA No. 34217  
 12                  PAINE HAMBLELL LLP  
 13                  717 West Sprague Avenue, Suite 1200  
 14                  Spokane, Washington 99201-3505  
 15                  Telephone: (509) 455-6000  
 16                  Facsimile: (509) 838-0007  
 17                  william.schroeder@painehamblen.com  
 18                  greg.hesler@painehamblen.com

19                  Jeffrey M. Hamerling (Bar No. 91532)  
 20                  *PRO HAC VICE*  
 21                  jhamerling@archernorris.com  
 22                  ARCHER NORRIS  
 23                  A Professional Law Corporation  
 24                  2033 North Main Street, Suite 800  
 25                  Walnut Creek, California 94596-3759  
 26                  Telephone: 925.930.6600  
 27                  Facsimile: 925.930.6620

28                  Attorneys for Defendant CHS INC.

1                   UNITED STATES DISTRICT COURT  
 2                   EASTERN DISTRICT OF WASHINGTON

3                  GRANGE SUPPLY CO., INC. OF  
 4                  PULLMAN and DIVINE  
 5                  CORPORATION,

6                  Plaintiffs,

7                  CASE NO. No. CV-09-359-EFS

8                  DECLARATION OF  
 9                  CONFIRMING COMPLIANCE WITH  
 10                 STIPULATED PROTECTIVE ORDER

11                  Assigned to: Hon. Judge Edward F. Shea

12                  v.  
 13                  CHS, INC.,

14                  Defendant.

15                  I, \_\_\_\_\_, declare the following:

16                  C0340002/919491-2

17                  - 1 -

18                  Declaration Confirming Compliance with Stipulated Protective Order

1        I recognize that during my involvement in this case I may have occasion to read or  
2 hear of documents produced in this litigation, or matters which are designated as Confidential  
3 Information. I agree to use any such documents and matters solely in connection with my  
4 participation in this case and for no other purpose.

5           2. I have read and I understand the Stipulated Protective Order entered in *Grange*  
6 *Supply Co. Inc., of Pullman et. al v. CHS Inc.*, United States District Court, Eastern District of  
7 Washington, Case No. CV-09-359-EFS and I agree to be bound by its terms in every respect.

8           3.     In addition, I consent to the jurisdiction of the United States District Court, Eastern  
9     District of Washington, with respect to any actions of any kind whatsoever relative to the  
10   enforcement of the Stipulated Protective Order, recognizing that in doing so I subject myself to  
11   the full powers of that Court, including the power of imposing sanctions for contempt.

12	4. My address is : _____
13	_____
14	_____

15 || 5. My telephone number is: \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of \_\_\_\_\_ and the United States of America that the foregoing is true and correct.

(Signature)